

Managing the legal risks of telecommuting

City life isn't for everyone. Every day, hundreds of office workers make the decision to drop out of the urban rat race and relocate to smaller towns and cities. For many, the change in scenery won't mean changing jobs. They have arranged with their employers to telecommute from their new digs.

For some of the new breed of telecommuters, the quest for affordable housing prompts the relocation. For others, it's going back home to help care for aging family members or have grandparents play a bigger role in their kids' lives. Some states, like Vermont, offer financial incentives to transplants who persuade their employers to let them relocate and telecommute.

Someone who already works for you would probably jump at the chance to telecommute. In today's tight labor market, the best new hire may live halfway across the country.

Before embracing remote work as an option in your organization, know what you're getting into. You'll need to manage three kinds of telecommuting risks: workplace safety, time tracking and compliance with local laws.

Safety: Employers are responsible for ensuring that telecommuters have an appropriate work environment at home. It's not enough to set up high-speed internet and provide log-in access to the computer network. Most of the workplace safety standards that apply in your office also cover home offices.

Tip: Your workers' compensation carrier may have checklists you can use to ensure telecommuter safety. Some carriers will insist on inspecting home offices.

Timekeeping: Consider how you will track hourly telecommuters' work time. Make sure any timekeeping software is easy to use and accurately records all hours worked in a way that rounds in the employee's favor over the long run.

Local laws: You will have to comply with the wage-and-hour and anti-discrimination laws in the jurisdiction where your telecommuter works. Engage an employment law attorney with expertise in the local legal environment.

Can telecommuters claim hostile environment?

Don't assume that an employee who works from home can't launch a hostile work environment claim. Prevailing in such a lawsuit doesn't depend solely on demonstrating a pattern of direct interpersonal hostility. Other factors count, too.

Recent case: Kristen worked for Aramark Services, consistently earning satisfactory reviews. Her job required frequent travel, but very little actual presence at a specific facility. In fact, she mostly worked from her home in New York and from an apartment she rented in Virginia.

Kristen took frequent intermittent FMLA leave to care for her son, who was ill. After her son died, she continued to work out of her home.

Aramark fired Kristen and she sued, alleging sex discrimination and a hostile work environment.

She claimed her male supervisor often commented about her weight and micromanaged her performance, something she said never happened to male co-workers. Kristen said her boss complained about the FMLA leave she took, even as he went out of his way to support a man who took FMLA leave to care for his sick wife.

She alleged that, overall, women were generally treated poorly, adding to the hostile environment.

Aramark argued that her complaints didn't amount to more than annoyances, not a hostile environment.

The court disagreed. It reasoned that an employee doesn't have to be bombarded daily with sexist and sexual comments to work in a hostile environment. Environment is more than the time spent directly interacting. It includes less obvious anti-female behavior experienced at a distance, too. The court ordered a trial. (*King v. Aramark*, WD NY, 2019)